

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01
CIAE-00 COME-00 EPG-02 DODE-00 EB-07 FPC-01 H-01
INR-07 INT-05 L-03 NSAE-00 NSC-05 OMB-01 PM-04
USIA-06 OES-07 SP-02 SS-15 STR-04 TRSE-00 ACDA-07
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FM USMISSION USBERLIN

TO SECSTATE WASHDC 4507

INFO AMEMBASSY BERLIN UNN

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E.O.11652: N/A

TAGS: ENRG, PGOV, SENV, WB

SUBJECT: SENAT SUFFERS ANOTHER DEFEAT IN POWER PLANT
QUESTION

REF: 1976 USBERLIN 2702

1. SUMMARY: AN APPEALS COURT HAS CONFIRMED DECEMBER 1976
LOWER COURT DECISION THAT PROPOSED POWER PLANT SITE MAY NOT
BE CLEARED OF TREES PENDING COMPLETION OF PERMIT PROCESSES,
AND HAS ADVISED SENAT TO FIND ANOTHER SITE FOR PLANT AND
TO INSTALL NEW PEAKLOAD FACILITIES TO TAKE CARE OF POWER
SHORTAGES EXPECTED IN FOUR YEARS. DECISION CONTRIBUTES TO
UNCERTAINTY OVER EVENTUAL OUTCOME, AND SENAT IS STUDYING
NEXT MOVE. END SUMMARY.

2. A BERLIN SUPERIOR ADMINISTRATIVE COURT REJECTED ON MAY 2
THE APPEAL OF THE BERLIN SENAT AGAINST A DECEMBER 1976 LOWER
COURT RULING PROHIBITING THE CLEARING OF THE FOREST SITE FOR
A PROPOSED 600 MW COAL-FIRED POWER PLANT. APPEALS COURT
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CONCLUDED THAT TO ALLOW CLEARANCE OF TREES FROM SITE NOW
WOULD IN EFFECT PRE-EMPT DECISIONS TO BE TAKEN LATER UNDER
FEDERAL ENVIRONMENTAL PROTECTION LAW AND OTHER PROVISIONS
OF LAW. THE COURT'S RESTRAINING ORDER IS NOT APPEALABLE.

3. WHILE THERE IS SOME DISAGREEMENT IN PRESS ACCOUNTS OF
LINE OF LOGIC IN COURT PRESIDENT'S ORAL RULING, COURT APPEARS

TO HAVE TOLD THE SENAT THAT THE SITE CANNOT BE
CLEARED UNTIL ALL THE MANY PERMITS NECESSARY UNDER
VARIOUS LAWS HAVE BEEN ISSUED, NOT JUST THOSE PERMITS
REQUIRED UNDER FEDERAL ENVIRONMENTAL LAW ON WHICH COURT
CASE WAS ORIGINALLY FOUNDED. THIS IMPLIES A DELAY OF
FROM TWO YEARS UP SINCE THE ISSUANCE OF SOME PERMITS CAN
BE ATTACKED IN THE COURTS AND LEAD TO PROTRACTED LITIGA-
TION. JUDGE WENT ON TO LECTURE SENAT THAT POWER PLANT
SHOULD NOT BE BUILT IN FOREST AT ALL, SINCE BERLIN'S
GEOPOLITICAL SITUATION "ENERGY IS GOOD, BUT NATURE IS
BETTER" AND CITY CANNOT SPARE ANY TREES. HE RECOMMENDED
SENAT START OVER FROM BEGINNING AND TRANSFER PROJECT TO
INDUSTRIAL AREA KNOWN AS RUHLEBEN WHICH IS CONSIDERED
ALREADY OVERLOADED WITH AIR POLLUTION SOURCES. HE SAID
THAT FOR PERIOD IN EARLY EIGHTIES FOR WHICH ELECTRIC POWER
SHORTAGE IS TO BE EXPECTED, SENAT SHOULD BUILD A NEW GAS-
TURBINE PEAKLOAD PLANT TO BRIDGE THE GAP UNTIL NEW BASE-
LOAD PLANT IS COMPLETED. (COMMENT: SUCH STOGAP MEASURE
IS FEASIBLE BUT EXPENSIVE AND WASTEFUL; CITY ALREADY
HAS ENOUGH PEAKLOAD CAPACITY AND NEW PEAKLOAD PLANT WOULD
BE SURPLUS TO NEEDS AFTER NEW BASELOAD BPLANT CAME ONSTREAM.
JUDGE NOTED, HOWEVER, THAT EXPENSE DOESN'T MATTER.)
SINCE ANY FUTURE JUDICIAL ACTIONS UNDER ENVIRONMENTAL
LAW WILL COME BEFORE THE SAME COURT, JUDGE LEFT DISTINCT
IMPLICATION THAT HE WILL DO EVERYTHING IN HIS POWER TO
BLOCK CONSTRUCTION ON FOREST SITE IF SENAT INSISTS ON
STICKING WITH THIS LOCATION.

4. SENAT'S ATTORNEY CRITICIZED DEICSION AS CREATING SPECIAL
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LAW FOR BERLIN, PRESUMABLY REFERRING TO COURT'S GOING
BEYOND QUESTION UNDER CONSIDERATION, TELLING EXECUTIVE
BRANCH WHERE TO LOCATE PROJECT, AND IMPLYING IT WILL
ENFORCE ITS DESIRES THROUGH ITS AUTHORITY TO DEAL WITH
FUTURE ENVIRIONMENTAL ACTIONS.

5. JUNIOR COALITION PARTNER FDP NOTES THAT DECISON
REOPENAS QUESTION OF LOCATION ON HAVEL RIVER WHICH IT
HAD FAVORED ALL ALONG. JUDGE DID NOT MENTION THIS LOCA-
TION, HOWEVER, AND IT WOULD BE CERTIAN TO DRAW STRONG FIRE
FROM PROTESTERS. OPPOSITION CDU USED DECISION TO REFER
TO SENAT'S SLOPPY PLANNING OF VIAL PROJECTS. SENAT NOW
CONSIDERING HOW TO PROCEED.

6. THE QUESTION OF NUCELAR ENERGY CAME INTO PLAY PER-
IPHERALLY. IN RESPONSE TOJUDGE'S SUGGESTION TO RELOCATE
PLANT TO RUHLEBEN, SENAT REPLIED INTER ALIA THAT THIS
SITE WAS BEING RESERVED FOR POSSIBLE FUTURE
USE A NUCLEAR PLANT. JUDGE STATED, HOWEVER, THAT IDEA

OF NUCLEAR PLANT IN BERLIN WAS DEAD.

7. COMMENT: COURT'S DECISION LEAVES OPEN THE QUESTION WHETHER BERLIN CAN SUPPLY ITS ELECTRIC POWER REQUIREMENTS OVER THE MEDIUM TERM WITH ITS OWN RESOURCES. IT WEAKENS THE HAND OF THE FRG IN ANY NEGOTIATIONS IT MAY DECIDE TO START WITH THE GDR FOR A TRANSMISSION LINE FROM THE FEDERAL REPUBLIC TO BERLIN OR ALTERNATIVELY FOR SUPPLY OF SOME GDR POWER TO BERLIN AND THE FRG OVER THE LONGER TERM. FRG HAS LATERATIVE OF SEEKING NEGOTIATIONS IN PRESENT STATE OF DISARRAY, OR WAITING FURTHER TO SEE WHETHER BERLIN CAN MANAGAE ITS COURTS AND ITS RELATIVELY SMALL NUMBER OF PROTESTERS, MOST OF WHOM HAVE NOW MADE EVIDENT THAT THEEIR OPPOSITION IS POLITICAL RAHTER THAN ENVRIONMENTAL. GEORGE

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Message Attributes

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